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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,495	07/26/2001	Shunsuke Nakamura	393032027400	9199

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EXAMINER
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NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/916,495	Applicant(s) NAKAMURA, SHUNSUKE	
	Examiner Freda A. Nelson	Art Unit 3639	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 6-11, 17-22, 28-33, 39-44 and 50-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 12-16, 23-27, 34-38, and 45-49 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The communication received on November 7, 2005 is acknowledged and entered. Claims 1-5, 12-16, 23-27, 34-38, and 45-49 have been elected. Claims 1-55 are currently pending.

#### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

2. The information disclosure statements (IDSs) submitted on 07/26/2001 and 09/13/2004 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner. Copies of PTO-1449s are attached hereto.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-4, 14-15, 25-26, 36-37, and 47-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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4. Claim 3 recites the limitations "the basis of information" in line 4 and "before reception", in line 5. There is insufficient antecedent basis for these limitations in the claim.

5. As for claims 4, 15, 26, 37, and 48, the applicant uses the claim language "said registration means registers said creator terminal depending on results of examination of the content item for examining purpose" wherein the examiner takes the position that the results of the examination does not permit the creator terminal to be registered thus eliminating the use of content distribution system.

6. Claim 4 recites the limitation "said transmitted information" in line 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 14 recites the limitation "the basis of information" in line 3 and "before reception", in line 4. There is insufficient antecedent basis for these limitations in the claim.

8. Claim 15 recites the limitation "said transmitted information" in line 3. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 25 recites the limitation "the basis of information" in line 4 and "before reception", in line 5. There is insufficient antecedent basis for these limitations in the claim.

10. Claim 26 recites the limitation "said transmitted information" in line 2. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 36 recites the limitation "the basis of information" in line 3 and "before reception", in line 4. There is insufficient antecedent basis for these limitations in the claim.

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12. Claim 37 recites the limitation "said transmitted information" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

13. Claim 47 recites the limitation "the basis of information" in lines 3-4 and "before reception", in lines 4-5. There is insufficient antecedent basis for these limitations in the claim.

14. Claim 48 recites the limitation "said transmitted information" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

15. Claims 1-4, 12-15, 23-26, 34-37, and 45-48 are rejected under 35

U.S.C. 102(a) as being anticipated by Sasaki et al. (JP 2000163488).

16. As for claims 1, 12, 23, 34, and 45, Sasaki et al. disclose a content distribution system including a creator terminal, a distribution server and a client terminal, and configured such that said creator terminal provides a content item to said distribution server, and said distribution server stores the provided content item and supplies the stored content item to said client terminal in response to a request from said client terminal, wherein said distribution server comprises:

charge processing means for charging a fee to a user of said client terminal when the content item stored in said distribution server is supplied to said client terminal (paragraphs [0034]-[0038]); and

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kickback processing means for kicking a portion of the charged fee back to a registered user of said creator terminal who has provided the content item (paragraph [0039]).

17. As for claims 2, 13, 24-25, 35, and 46, Sasaki et al. disclose a content distribution system, wherein the content item is a piece of music, and said distribution server further comprises copyright processing means for executing processing in relation to copyright of a content item supplied from said creator terminal to said distribution server (paragraphs [0045], [0055]).

18. As for claim 3, 14-15, 36-37, and 47, Sasaki et al. disclose that said distribution server further comprises: registration means for registering said creator terminal on the basis of information transmitted from said creator terminal before reception of a content item from said creator terminal (paragraph [0055]).

19. As for claims 4, 26, and 48, Sasaki et al. do not disclose that said transmitted information is a content item for examining purpose, and said registration means registers said creator terminal depending on results of examination of the content item for examining purpose, however claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 4 including a registration means are disclosed in Sasaki et al. as described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

20. Claims 5, 16, 27, 38, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki et al. (JP 2000163488) in view of Lin et al. (Patent Number 6,366,791).

21. As for claims 5, 16, 27, 38, and 49, Sasaki et al. do not disclose a content distribution system according to claim 1, wherein said client terminal is a phone, and said content item is a piece of music used on the phone.

Lin et al. disclose that it should be understood that prior to allowing the mobile subscriber to access the subscriber record 28, the identity of the mobile subscriber is first authenticated. Fees for each musical score 55 can be displayed to the mobile subscriber on the computer 21, and acceptance of these fees provided by the mobile subscriber to the network operator via the web page

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45 prior to initiating downloading of the selected musical score(s) 55 (col. 3, lines 60-65); and that the downloading of ringing tone patterns 65 to MSs 20 can be implemented within any type of cellular system (col. 4, lines 30-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Sasaki et al. to include the feature of Lin et al. in order to permit the user to download music to handheld terminals.

### ***Conclusion***

22. The examiner has cited prior art of interest, for example:

1) Archibald et al. (Patent Number 5,825,883), which disclose a method and apparatus that accounts for usage of digital applications

2) Sung et al. (Patent Number 6,423,893), which disclose a method and system for electronically creating and publishing music instrument instructional material using a computer network.

3) Yoshioka et al. (Patent Number 5,884,280), which disclose a system for and method for distributing proceeds from contents.

4) LeVine (Patent Number 6,961,714), which discloses a method of quantifying royalty owner rights.

5) Zhao (Patent Number 6,081,840), which discloses a two-level content distribution system.

6) Allen (Patent Number 6,744,891), which discloses methods and system for ensuring royalty payments for data delivered over a telephone network utilizing bidirectional communication.

7) Joao (US PG Pub. 2001/0037205), which disclose an apparatus and method for effectuating an affiliated marketing relationship.

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8) Hoffert et al. (Patent Number 5,983,176), which disclose an evaluation of media content in media files.

9) Takashi (JP 2002041822 A), which discloses an online gallery system and online gallery distribution method.

10) Kim (KR 2002036523 A), which discloses a system and method for offering music copyright information.

11) Susuki (JP 2002101313 A), which discloses a creation information sales managing method, its program recording medium and transmission medium.

12) "NTT DoCoMo Forms Venture to Download Music on Handsets", Jan. 28, 2000, Asian Wall Street Journal, pg. 10.

13) Snider, Mike, "Video, Music: It's All On the Wrist", Jan. 10, 2000, USA Today, pg. 3.

14) Woodward, Steve, "Explosive Growth Expected in Wireless Networking", Mar 23, 2000, Newhouse News Service, pg. 1.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

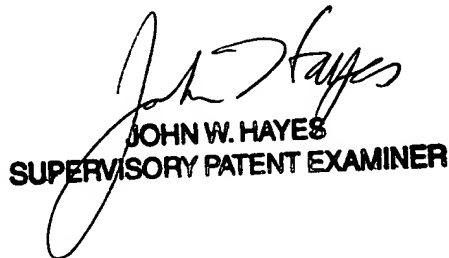
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 01/18/2006

A handwritten signature in black ink, appearing to read "Nedra Nelson".A handwritten signature in black ink, appearing to read "John W. Hayes".  
**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**